

§ 1.861-9T(g)(2)(iii) to reflect the portion of the principal amount of the indebtedness outstanding at year-end relating to the interest which is directly allocated. A similar adjustment shall be made to the end-of-year value of assets for the prior year for purposes of determining the beginning-of-year value of assets for the current year. These adjustments shall be made prior to averaging beginning-of-year and end-of-year values pursuant to § 1.861-9T(g)(2). In apportioning interest expense under the modified gross income method, gross income shall be reduced by the amount of income to which interest expense is directly allocated under this section.

(e) *Treatment of certain related group indebtedness.* For further guidance, see § 1.861-10(e).

(f) *Effective/applicability date.* (1) In general, the rules of this section apply for taxable years beginning after December 31, 1986.

(2) Paragraphs (b)(3)(ii) (providing an operating costs test for purposes of the nonrecourse indebtedness exception) and (b)(6) (concerning excess collateralization of nonrecourse borrowings) of this section are applicable for taxable years commencing after December 31, 1988.

(3) Paragraph (e) (concerning the treatment of related controlled foreign corporation indebtedness) of this section is applicable for taxable years commencing after December 31, 1987. For rules for taxable years beginning before January 1, 1987, and for later years to the extent permitted by § 1.861-13T, see § 1.861-8 (revised as of April 1, 1986).

[T.D. 8228, 53 FR 35485, Sept. 14, 1988, as amended by T.D. 9456, 74 FR 38875, Aug. 4, 2009; T.D. 9882, 84 FR 69068, Dec. 17, 2019]

**§ 1.861-11 Special rules for allocating and apportioning interest expense of an affiliated group of corporations.**

(a) *In general.* For further guidance, see § 1.861-11T(a).

(b) *Scope of application*—(1) *Application of section 864(e)(1) and (5) (concerning the definition and treatment of affiliated groups).* Section 864(e)(1) and (5) and the portions of this section implementing section 864(e)(1) and (5)

apply to the computation of foreign source taxable income for purposes of section 904 (relating to various limitations on the foreign tax credit). Section 864(e)(1) and (5) and the portions of this section implementing section 864(e)(1) and (5) also apply in connection with section 907 to determine reductions in the amount allowed as a foreign tax credit under section 901. Section 864(e)(1) and (5) and the portions of this section implementing section 864(e)(1) and (5) also apply to the computation of the combined taxable income of the related supplier and a foreign sales corporation (FSC) (under sections 921 through 927) as well as the combined taxable income of the related supplier and a domestic international sales corporation (DISC) (under sections 991 through 997).

(2) *Nonapplication of section 864(e)(1) and (5) (concerning the definition and treatment of affiliated groups).* For further guidance, see § 1.861-11T(b)(2).

(c) *General rule for affiliated corporations.* For further guidance, see § 1.861-11T(c).

(d) *Definition of affiliated group*—(1) *General rule.* For purposes of this section, in general, the term *affiliated group* has the same meaning as is given that term by section 1504. Section 1504(a) defines an affiliated group as one or more chains of includible corporations connected through 80-percent stock ownership with a common parent corporation which is an includible corporation (as defined in section 1504(b)). In the case of a corporation that either becomes or ceases to be a member of the group during the course of the corporation's taxable year, only the interest expense incurred by the group member during the period of membership shall be allocated and apportioned as if all members of the group were a single corporation. In this regard, assets held during the period of membership shall be taken into account. Other interest expense incurred by the group member during its taxable year but not during the period of membership shall be allocated and apportioned without regard to the other members of the group.

(2) [Reserved]

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(d)(3)-(6)(i) [Reserved]. For further guidance see § 1.861-11T(d)(3) through (6)(i).

(ii) Any foreign corporation if more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected with the conduct of a trade or business within the United States and at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence). This paragraph (d)(6)(ii) applies to taxable years beginning on or after *July 16, 2014*. See 26 CFR 1.861-11T(d)(6)(ii) (revised as of April 1, 2014) for rules applicable to taxable years beginning after August 10, 2010, and before *July 16, 2014*. See 26 CFR 1.861-11T(d)(6)(ii) (revised as of April 1, 2010) for rules applicable to taxable years beginning on or before August 10, 2010.

(7) *Special rules for the application of § 1.861-11T(d)(6)*. The attribution rules of section 1563(e) and the regulations under that section shall apply in determining indirect ownership under § 1.861-11T(d)(6). The Commissioner shall have the authority to disregard trusts, partnerships, and pass-through entities that break affiliated status. Corporations described in § 1.861-11T(d)(6) shall be considered to constitute members of an affiliated group that does not file a consolidated return and shall therefore be subject to the limitations imposed under § 1.861-11T(g). The affiliated group filing a consolidated return shall be considered to constitute a single corporation for purposes of applying the rules of § 1.861-11T(g). For taxable years beginning after December 31, 1989, § 1.861-11T(d)(6)(i) shall not apply in determining foreign source alternative minimum taxable income within each separate category and the alternative minimum tax foreign tax credit pursuant to section 59(a) to the extent that such application would result in the inclusion of a section 936 corporation within the affiliated group. This paragraph (d)(7) applies to taxable years beginning after December 31, 1986.

(e)-(g) [Reserved]. For further guidance, see § 1.861-11T(e) through (g).

(h) *Applicability dates*. This section applies to taxable years that both begin after December 31, 2017, and end on or after December 4, 2018.

[T.D. 8916, 66 FR 273, Jan. 3, 2001, as amended by T.D. 9676, 79 FR 41426, July 16, 2014; T.D. 9882, 84 FR 69068, Dec. 17, 2019]

### § 1.861-11T Special rules for allocating and apportioning interest expense of an affiliated group of corporations (temporary).

(a) *In general*. Sections 1.861-9T, 1.861-10T, 1.861-12T, and 1.861-13T provide rules that are generally applicable in apportioning interest expense. The rules of this section relate to affiliated groups of corporations and implement section 864(e) (1) and (5), which requires affiliated group allocation and apportionment of interest expense. The rules of this section apply to taxable years beginning after December 31, 1986, except as otherwise provided in § 1.861-13T. Paragraph (b) of this section describes the scope of the application of the rule for the allocation and apportionment of interest expense of affiliated groups of corporations, which is contained in paragraph (c) of this section. Paragraph (d) of this section sets forth the definition of the term “affiliated group” for purposes of this section. Paragraph (e) describes the treatment of loans between members of an affiliated group. Paragraph (f) of this section provides rules concerning the affiliated group allocation and apportionment of interest expense in computing the combined taxable income of a FSC or DISC and its related supplier. Paragraph (g) of this section describes the treatment of losses caused by apportionment of interest expense in the case of an affiliated group that does not file a consolidated return.

(b) *Scope of application*—(1) *Application of section 864(e)(1) and (5) (concerning the definition and treatment of affiliated groups)*. For further guidance, see § 1.861-11(b)(1).

(2) *Nonapplication of section 864(e) (1) and (5) (concerning the definition and treatment of affiliated groups)*. Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) do not apply to the computation of subpart F income of controlled foreign corporations (under